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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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August 23, 1993

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RE: MM Docket 93-180,
RM-8237
KRJT-FM
Bowie, Texas

Dear Mr. Caton:

Transmitted herewith, on behalf of Bowie-Nocona Broadcasting Co., Inc., licensee of FM broadcast station KRJT-FM, Bowie, Texas, are an original and four (4) copies of its Comments in the above-referenced rulemaking proceeding.

Should any question arise concerning this matter, please communicate with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH

Patricia A. Mahoney
Patricia A. Mahoney
Counsel for Bowie-Nocona
Broadcasting Co., Inc.

PAM:dlr

Enclosure

cc: Michael C. Ruger, Esq.
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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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AUG 23 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations,
Bowie, Texas)
)
) MM Docket No. 93-180
) RM-8237
)
)Directed to: Chief, Allocations Branch
Mass Media Bureau**COMMENTS**

Bowie-Nocona Broadcasting Co., Inc. (Bowie-Nocona), licensee of FM broadcast station KRJT-FM, Bowie, Texas, by its attorney, hereby respectfully submits its Comments in response to the Notice of Proposed Rule Making, DA 93-722 (NPRM), released on June 30, 1993, in the above-referenced proceeding:

INTRODUCTION

Bowie-Nocona is the licensee of Station KRJT-FM, Bowie, Texas. KRJT-FM is presently allotted Channel 264C3 at Bowie. In the NPRM, the Commission proposes to substitute Channel 264A for Channel 264C3 at Bowie. Bowie-Nocona respectfully opposes the proposal and requests that its current allotment remain undisturbed.

As Bowie-Nocona already demonstrated in its Petition for Immediate Reconsideration of the NPRM (BNBC Petition), filed on July 8, 1993, the NPRM was premised on inaccurate information. The NPRM states that

"To date Bowie Nocona has not filed a
Form 301 to upgrade Station KRJT-FM to a

Class C3 facility. Therefore, Bowie Nocona is deemed to have abandoned its interest in the Class C3 allotment."

That statement is inaccurate. Bowie-Nocona tendered an application on FCC Form 301 on May 27, 1993. It was received at the Commission on May 28 and given the file number BPH-930528IB. By June 16, 1993, when the NPRM was adopted, and June 30, 1993, when the NPRM was released, Bowie-Nocona's application had already appeared on two public notices: as received, June 10, 1993; and as accepted for filing and tender, June 14, 1993. See BNBC Petition, Attachments 1-2. Bowie-Nocona never abandoned its interest in its Class C3 allotment.

Obviously, the staff mistakenly concluded that Bowie-Nocona had no interest in its C3 allotment. As Bowie-Nocona's application and the BNBC Petition illustrate, Bowie-Nocona very definitely wants its upgrade. See BNBC Petition, Attachment 3. Since the NPRM's basic premise was flawed, on July 8, 1993, Bowie-Nocona requested reconsideration of the NPRM and asked that the NPRM be immediately vacated. Bowie-Nocona requested that at the very least the NPRM should be corrected to reflect that Bowie-Nocona's application is entitled to consideration with the proposed petition for rulemaking, pursuant to the policy set forth in Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, 7 FCC Rcd 4917 (1992).

Despite the errors and irregularities demonstrated by Bowie-Nocona in the BNBC Petition, including the fact that the NPRM **does not even require service of comments on Bowie-Nocona although Bowie-Nocona's station KRJT-FM is the**

only station affected by the NPRM, there has been no action correcting or vacating the NPRM, to the best of Bowie-Nocona's knowledge. Accordingly, Bowie-Nocona submits these comments opposing the proposed downgrade of its station KRJT-FM and incorporates herein by reference its BNBC Petition and its Reply to Opposition to Petition for Reconsideration (BNBC Reply), filed July 30, 1993, in this proceeding.

***THE PUBLIC INTEREST IS NOT SERVED BY THE
PROPOSED DOWNGRADING OF KRJT-FM***

The downgrading of KRJT-FM will not serve the public interest. The NPRM was initiated upon the petition of Central Oklahoma Radio Corporation (CORC), licensee of Station KFXT(FM), Sulphur, Oklahoma (not Sulphur, Louisiana, as indicated throughout the NPRM). As the BNBC Petition reflects, CORC failed to demonstrate in its Petition for Rulemaking (CORC Petition) how its proposal would serve the public interest. What CORC did submit in its CORC Petition to assert that the public interest would be served by its proposal was **misleading and disingenuous**. CORC noted that it had filed an application to implement its upgrade to a Class C2 facility and that its application conflicts with the KRJT-FM Class C3 allotment. CORC then stated that

"The KFXT application, if approved, will allow [CORC] to greatly expand the service area for the station.^{2/} The Commission has consistently found that such an increase in service area is inherently in the public interest."

In footnote 2, CORC noted that "KFXT is presently a Class A operation with a limited service area." See CORC Petition at 2.

These representations are misleading. The Commission already **twice authorized an expansion of KFXT's service from its present Class A operation and "limited service area"** when the Commission (1) upgraded KFXT's channel to a Class C3 operation in the same proceeding in which KRJT-FM's channel was upgraded, see Report and Order in MM Docket No. 89-234, 5 FCC Rcd 2152, 2165 (MM Bureau, Allocations, 1990), and again (2) when the Commission upgraded KFXT's channel to a Class C2 station in a rulemaking proceeding (MM Docket No. 91-343) that has already been concluded. KFXT apparently decided not to implement its Class C3 upgrade. Although CORC could have upgraded KFXT at its current site, **CORC has maintained KFXT as a Class A operation.**

According to its own representations before the Commission in the C2 rulemaking proceeding, CORC can implement its C2 upgrade and "greatly expand the service area" of its station KFXT **without a downgrade of KRJT-FM!** In its "Petition for Rulemaking and Order to Show Cause," filed October 30, 1991, which led to CORC's C2 upgrade in MM Docket No. 91-343, CORC included an engineering study that CORC stated "indicates that the subject modification can be effectuated by KFXT **from its currently licensed geographic coordinates without any other change in the Table of Allotments.**" See BNBC Petition, Attachment 8 (emphasis added). Indeed, the Allocations Branch accepted CORC's representations and noted in both the Notice of Proposed Rule Making¹ and Report and Order² in MM Docket No. 91-

¹Amendment of Section 73.202(b) (Sulphur, Oklahoma), DA 91-1435 (MM Bur., released Nov. 29, 1991).

343 that CORC's KFXT(FM) could be upgraded to Class C2 status **at its current site.**

The Notice of Proposed Rulemaking in MM Docket 91-343 stated³:

"We believe the public interest would be served by proposing the substitution of Channel 265C2 for Channel 265C3 at Sulphur, Oklahoma, since it could provide the community with a wide coverage area FM service and enable Station KFXT(FM) to expand its service area. Channel 265C2 can be allotted to Sulphur in compliance with the Commission's minimum distance separation requirements at the station's presently licensed transmitter site.1"

Footnote 1 gave the current KFXT(FM) coordinates as 34°32'57" North Latitude, 96°58'34" West Longitude. The unacceptable KFXT(FM) application proposes a transmitter site at: 34°26'25" North Latitude, 97°12'09" West Longitude. See BPH-921023IB.

CORC's Petition misleadingly implies that the downgrading of KRJT-FM is necessary for CORC to implement its upgrade; but that is obviously untrue, as evidenced by CORC's own representations to the Commission.⁴ Yet, CORC's ploy was successful, and in the NPRM the staff accepted (apparently without question) CORC's representations as to how the public interest would be served by the

²Amendment of Section 73.202(b) (Sulphur, Oklahoma), DA 92-599 (MM Bur., released May 22, 1992).

³Similar language appeared in the Report and Order.

⁴It is very curious that CORC would obtain an upgrade for its own station by representing in the rulemaking proceeding that no other change would be necessary to the Table of Allotments and then subsequently try to obtain a downgrade of KRJT-FM surreptitiously through an application that was not even served on the licensee of KRJT-FM.

downgrading of KRJT-FM, without recalling that CORC was already able to upgrade KFXT to a Class C2 facility from its current transmitter site. Bowie-Nocona has demonstrated that, contrary to the misleading statements in CORC's filings with the Commission, KRJT-FM does not need to be downgraded in order for CORC to improve KFXT(FM) to a C2 facility. Downgrading KRJT-FM will only prevent members of the public from receiving service they would otherwise be able to receive from an upgraded KRJT-FM. CORC has told the Commission that it can implement its upgrade to C2 status and greatly expand its service area without any other adjustment to the FM Table of Allotments. The Commission should take CORC at its word.

**BOWIE-NOCONA'S APPLICATION SHOULD BE PREFERRED
UNDER THE COMMISSION'S CONFLICTS POLICY**

In its Report and Order in Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, 7 FCC Rcd 4917 (1992), modified, FCC 93-339 (July 13, 1993), the Commission established the procedures it would employ to resolve conflicts between rulemaking petitions to amend the FM Table of Allotments and applications for new FM stations or for changes in facilities. Under the new procedures, FM applications are protected from conflicting subsequently filed rulemaking proceedings at the same time they receive such protection from mutually exclusive applications. Applications filed subsequent to the filing of conflicting rulemaking petitions are considered timely filed and mutually exclusive with the rulemaking petitions, and the conflicts between them are to be resolved under the Commission's existing policy for making substantive choices between conflicting proposals.

In this proceeding, the Commission is faced with a conflict between a proposal to downgrade the allotment of KRJT-FM to Class A status and an application to implement the KRJT-FM's Class C3 upgrade.⁵ The choice before the Commission is solely whether the KRJT-FM should be limited to its current service area or improved to increase its service area. No other proposals are before the Commission. CORC's upgrade to Class C2 status is **not** at issue in this rulemaking proceeding. As discussed above, both CORC and the Commission have determined that CORC's KFXT can be upgraded to C2 status and its service greatly improved without any other change to the FM Table of Allotments. The Commission has already determined that KFXT can be upgraded to C2 status. Thus, the conflict is not between KFXT's upgrade and KRJT-FM's application.

The Commission has previously concluded that the public interest would be served by KRJT-FM's upgrade. Since the only choice before the Commission in this proceeding is between limiting the service of KRJT-FM or improving its service, the Commission's choice is clear: Bowie-Nocona's application to improve service should be preferred over the proposal to downgrade Bowie-Nocona's allotment.

CONCLUSION

Bowie-Nocona has demonstrated that the NPRM was based on incomplete and erroneous information and that the public interest will not be served by the proposed downgrade of KRJT-FM's allotment. There is no reason for the Commission to

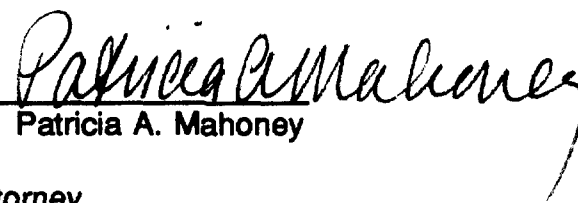
⁵Bowie-Nocona has already filed its application and has represented in this proceeding (see Attachment 3 to the BNBC Petition) that, if its application is granted, Bowie-Nocona will construct the facility authorized.

downgrade KRJT-FM's allotment when KRJT-FM's C3 status does not prevent, block, or affect the Class C2 status of CORC's station KFXT(FM). Bowie-Nocona has not, contrary to the NPRM, abandoned its interest in its C3 upgrade. It has filed an application to implement the upgrade and will construct its upgrade if and when its application is granted. Bowie-Nocona has also demonstrated that, contrary to the misleading statements in CORC's filings with the Commission, KRJT-FM does not need to be downgraded in order for CORC to improve KFXT-FM to a Class C2 facility. Downgrading KRJT-FM will only prevent members of the public from receiving the improved and expanded service they would otherwise be able to receive from an upgraded KRJT-FM.

WHEREFORE, for the foregoing reasons, it is respectfully requested that the Commission reconsider and abandon its proposal to downgrade KRJT-FM.

Respectfully submitted,

BOWIE-NOCONA BROADCASTING CO., INC.

By: 
Patricia A. Mahoney

Its Attorney

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August 23, 1993


CERTIFICATE OF SERVICE

I, Diane L. Roper, a secretary in the law firm of Fletcher, Heald & Hildreth, do hereby certify that true copies of the foregoing "Comments" were sent this 23rd day of August, 1993, by first-class United States mail, postage prepaid, to the following:

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